

ORIGINAL

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

March 10, 2000

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VIA HAND-DELIVERY

Mr. Christopher Wright, General Counsel
Mr. Larry Strickling, Chief, Common Carrier Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Summary of Oral *Ex Parte* Statement,
CC Docket 99-200, CC Docket 92-237

Dear Messrs. Wright and Strickling:

On February 16, 2000, Telcordia Technologies, Inc. ("Telcordia") submitted an *ex parte* comment to the Federal Communications Commission ("FCC") identifying three fundamental flaws in the North American Numbering Council's ("NANC's") recent recommendation to the FCC regarding the sole source award of the Thousand-Block Pool Administrator ("PA") contract to the current North American Numbering Plan Administrator ("NANPA"), NeuStar, Inc. ("NeuStar"). On February 25, 2000, NeuStar submitted an *ex parte* rebuttal taking issue with Telcordia's comments and indicating that it supported the non-competitive award of the PA contract to NeuStar.

This letter constitutes a written summary of oral *ex parte* comments provided by James J. McCullough, Esq., of Fried, Frank, Harris, Shriver, and Jacobson, on behalf of Telcordia, to Ms. Debra Weiner, Esq., and Ms. Maureen Duigan, Esq., of the FCC's Office of the General Counsel, on March 9, 2000.

PURPOSE OF ORAL *EX PARTE* COMMENTS

NeuStar filed its February 25, 2000 *ex parte* comments taking issue with Telcordia's comments without distributing courtesy copies of its comments to Telcordia, nor otherwise notifying Telcordia of this filing. Consequently, Telcordia only became aware of NeuStar's objections via the FCC's *ex parte* notice of March 8, 2000, and Telcordia and its counsel only received a copy of NeuStar's comments on March 9, 2000.

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Due to the FCC's scheduled March 17, 2000 meeting regarding CC Docket 99-200, and the termination of the *ex parte* presentation period, it was necessary for Telcordia to address NeuStar's February 25, 2000 comments orally on March 9, 2000.

**NEUSTAR'S COMMENTS FAIL TO ADDRESS
RELEVANT U.S. GENERAL ACCOUNTING OFFICE CASELAW
THAT ADDRESSES AND RESOLVES FEDERAL AGENCY
PROCUREMENT ISSUES SIMILAR TO THOSE PRESENTED HERE**

Both NeuStar and MCI¹ expressly maintain that the FCC's award of the PA contract does not constitute a procurement, and is, therefore, not subject to the Competition in Contracting Act ("CICA"). 41 U.S.C. §§ 251 et seq. Both NeuStar and MCI cite cases in various district courts, as well as the U.S. Court of Appeals for the Federal Circuit, which have held that certain transactions by government agencies do not constitute procurements. Both NeuStar and MCI, however, totally ignore relevant U.S. General Accounting Office ("GAO") caselaw. Neither party refers to Spectrum Analysis and Frequency Engineering, B-222635, 86-2 CPD ¶ 406, a case cited in Telcordia's February 16, 2000 comments and well known to the FCC, since it held that the FCC's use of a no-cost contract for the installation, service and maintenance of a computer database was subject to CICA, even where the access services were purchased directly by the public, without the use of any appropriated funds. NeuStar and MCI likewise do not refer to other GAO cases cited by Telcordia in its March 9, 2000 *ex parte* response to MCI, all of which demonstrate that the GAO will take protest jurisdiction over the type of transaction proposed by the NANC's December 22, 1999 Requirements Document. See N & N Travel & Tours, Inc., B-283731.2 (December 21, 1999); Simplix, B-274388, 96-2 CPD ¶216; and Premiere Vending, B-256560, 94-2 CPD ¶8.

In short, NeuStar and MCI both support their position with nothing more than a "one trick pony." Both present a set of cases in which certain tribunals refuse to address, for lack of jurisdiction, transactions similar to the transaction at issue here. Those cases, however, do not exhaust the relevant cases, and neither NeuStar nor MCI address the

¹ On March 1, 2000, MCI Worldcom ("MCI") submitted *ex parte* comments indicating its support for the non-competitive award of the PA contract to the current NANPA. Telcordia responded to this letter on March 9, 2000. Many of the same arguments presented by NeuStar on February 25, 2000 were proffered by MCI, and a substantial portion of Telcordia's March 9, 2000 response to MCI's letter applies equally to NeuStar's February 25 comments.

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GAO's caselaw, which clearly demonstrates GAO's willingness to take jurisdiction over this type of matter. While NeuStar and MCI ignore the GAO, the FCC should not. Any challenge to the FCC's non-competitive award of the PA contract to NeuStar would likely be presented to the GAO, in the first instance, where there is no doubt that the merits of the case will be heard and resolved.

Moreover, NeuStar's heavy reliance on one case, United States v. Citizens & Southern National Bank, 889 F.2d 1067 (Fed. Cir. 1989), is misplaced. Southern National was a Federal Circuit decision reversing a mid-1980's bid protest decision issued by the General Services Board of Contract Appeals ("GSBCA"). The case involved a transaction challenged under the Brooks Act, 40 U.S.C. § 759 (1987), which at that time authorized the GSBCA to resolve bid protests relating to the purchase of automatic data processing equipment, and addressed the question of government procurement under the Federal Property and Administrative Services Act of 1949, 40 U.S.C. §§ 471-544 (1982), as amended by the Brooks Act. See Southern National Bank, 889 F.2d at 1069. The Federal Circuit's reversal of the GSBCA's decision based on lack of jurisdiction under the Brooks Act reflected the Court's highly critical view of the GSBCA's continued attempts to expand its jurisdiction beyond that provided by the Brooks Act. Id. at 1070. The GSBCA's bid protest jurisdiction has since been repealed by Congress.

The Citizens & Southern case, in short, has nothing whatever to do with CICA, does not even mention CICA, and is simply not relevant to the Thousand-Block Pool Administration procurement currently at issue. Indeed, the case is not even pertinent here in a formal sense, since the Federal Circuit does not have appellate jurisdiction to review GAO decisions, and its decisions do not constitute binding precedent on the GAO.

**BOTH NEUSTAR AND MCI IGNORE THE ILLEGALITY OF
THE NANC'S DECEMBER 22, 1999 REQUIREMENTS DOCUMENT**

Finally, neither NeuStar nor MCI even attempt to address the patent illegality of the NANC's December 22, 1999 Requirements Document under the Federal Advisory Committee Act ("FACA"). As described in detail in Telcordia's February 16, 2000 letter to the FCC, FACA clearly prohibits NANC's proposed role in the procurement and administration of the PA contract. In its comments of March 1, 2000, MCI essentially concedes that the NANC's role in the administration of the Thousand-Block Pool, as currently articulated, is patently illegal. NeuStar, on the other hand, insinuates that 47 U.S.C. § 251(e)(1) (1996) grants the FCC "organic" authority to designate an advisory committee and then confer on that advisory committee the power to design, administer, and manage a procurement in ways that otherwise violate FACA. FACA, however,

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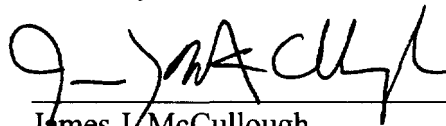
contains express prohibitions against such a unilateral grant of administrative and managerial power. In short, 47 U.S.C. § 251(e)(1) does not give the FCC the authority to confer upon a Federal Advisory Committee such as the NANC powers that the FACA expressly prohibits.

CONCLUSION

Both NeuStar and MCI maintain that the award of the PA contract does not constitute a procurement. Both, however, ignore GAO caselaw, which makes clear that the GAO has the authority to hear and resolve bid protests relating to the type of transaction at issue in this FCC procurement. Indeed, the bulk of NeuStar's analysis is focused on an inapposite decision by an appellate court whose decisions are not binding on the GAO. The GAO routinely takes jurisdiction over protests involving transactions similar to the one proposed in the NANC's December 22, 1999 Requirements Document, and any protest involving the FCC's award of the PA contract to NeuStar will likely be brought initially at the GAO.

Finally, neither NeuStar nor MCI challenge Telcordia's conclusions regarding the illegality under FACA of the NANC's recommendation as stated in the current Requirements Document. Any FCC action adopting or implementing the current NANC recommendation regarding NeuStar and the December 22, 1999 Requirements Document would be patently illegal.

Sincerely,



James J. McCullough

Deneen J. Melander

Andrew D. Skowronek

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cc (via hand delivery):

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Hon. Susan Ness
Hon. Michael Powell
Hon. Harold Furchgott-Roth
Hon. Gloria Tristani
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Debra Weiner, Esquire, Office of the General Counsel
Maureen Duigan, Esquire, Office of the General Counsel
John Hoffman, Chair, NANC
Magalie Roman Salas, Secretary (re: *ex parte* statement, CC Docket 99-200, CC Docket 92-237)